

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DMITRIY SHIROKOV, on behalf of himself
and all others similarly situated,

Plaintiff

v.

DUNLAP, GRUBB & WEAVER, PLLC; US
COPYRIGHT GROUP; THOMAS DUNLAP;
NICHOLAS KURTZ; GUARDALEY,
LIMITED; and ACHTE/NEUNTE Boll Kino
Beteiligungs GmbH & Co KG,

Defendants.

CIVIL ACTION NO. 1:10-CV-12043-GAO

**OBJECTIONS BY THE DEFENDANT, ACHTE/NEUNTE BOLL KINO
BETEILIGUNGS GMBH & CO KG, PURSUANT TO FED. R. CIV. P. 72(b), TO THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS ON DEFENDANTS'
MOTIONS TO DISMISS THE SECOND AMENDED COMPLAINT**

The defendant, Achte/ Neunte Boll Kino Beteiligungs GmbH & Co KG (“Achte”) hereby objects to the Magistrate Judge’s Report and Recommendations on Defendants’ Motions to Dismiss The Second Amended Complaint (“Complaint”). As grounds therefore, Achte hereby states the following objections:

1. The Magistrate Judge erred in accepting as facts mere conclusions of law recited in the Complaint;
2. The Magistrate Judge erred in recommending that attorneys’ fees constitute an injury sufficient to convey standing;
3. The Magistrate Judge erred in refusing to apply the Noerr-Pennington Doctrine;
4. The Magistrate Judge erred in refusing to extend the Massachusetts Litigation privilege;

5. The Magistrate Judge erred in concluding that a conspiracy could exist between Achte and its attorneys where the alleged conspiracy related solely to the legal representation;

6. The Magistrate Judge erred in recommending that Count 11 proceed as a Declaratory Judgment Action where no actual controversy exists; and

7. The Magistrate Judge erred in recommending that Count 18 (M.G.L. c. 93A) should survive against the Dunlap Defendants and Achte.

Achte hereby incorporates as if fully set forth herein the Objections and arguments set forth in the Objections of Defendants Dunlap, Grubb & Weaver, PLLC, US Copyright Group, Thomas Dunlap, and Nicholas Kurtz.

WHEREFORE, the defendant, Achte/ Neunte Boll Kino Beteiligungs GmbH & Co KG respectfully submits the aforesaid objections pursuant to Fed. R. Civ. P. 72(b) for the limited purpose of clarifying the Magistrate's Report with respect to Counts 11 and 18.

Achte/ Neunte Boll Kino Beteiligungs
GmbH & Co KG

By its Attorneys,

/s/ Kevin C. Cain
Kevin C. Cain
BBO # 550055
Harvey Weiner
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PEABODY & ARNOLD LLP
Federal Reserve Plaza
600 Atlantic Avenue
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(617) 951-2100

Dated: March 15, 2012.

CERTIFICATE OF SERVICE

I, Kevin C. Cain, hereby certify that on this 15th day of March, 2012 I served the within Objections of Defendant, Achte/ Neunte Boll Kino Beteiligungs GmbH & Co KG, to Magistrate's Report and Recommendations on Defendants' Motions to Dismiss the Second Amended Complaint Pursuant to Fed. R. Civ. P. 72(b) by causing a copy thereof to be sent electronically to the registered participants in this case, as identified on the Notice of Electronic Filing.

/s/ Kevin C. Cain

Dated: March 15, 2012

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